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STATE OF TEXAS,
Plaintiff

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IN THE DISTRICT COURT OF

vs.

RANDI PIERCE d/b/a
FLOWERS FOR YOU, INC. d/b/a
YOUR FLORIST
Defendant

DALLAS COUNTY, TEXAS

____ JUDICIAL DISTRICT

**PLAINTIFF’S ORIGINAL PETITION AND APPLICATION FOR TEMPORARY
RESTRAINING ORDER AND ASSET FREEZE**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, THE STATE OF TEXAS, Plaintiff, acting by and through Attorney General GREG ABBOTT, filing Plaintiff's Original Petition and Application for Temporary Restraining Order complaining of and against RANDI PIERCE d/b/a FLOWERS FOR YOU, INC. d/b/a YOUR FLORIST (“Defendant Randi Pierce”), based on her unauthorized use of consumers’ credit, debit, and check cards (“collectively referred to as “credit cards”), and would respectfully show the court the following:

DISCOVERY CONTROL PLAN

1. Discovery is intended to be conducted under Level 2 of Texas Rule of Civil Procedure 190.

JURISDICTION

2. This suit is brought by the ATTORNEY GENERAL through the Consumer Protection

Division in the name of the STATE OF TEXAS and in the public interest under the authority granted to him by § 17.47 of the Deceptive Trade Practices-Consumer Protection Act (“DTPA”), TEX. BUS. & COM. CODE ANN. 17.41 *et seq.*

PARTY DEFENDANTS

3. Defendant RANDI PIERCE d/b/a FLOWERS FOR YOU, INC. d/b/a YOUR FLORIST is an individual operating a florist business, which was formerly located at 3213 Knox Street in Dallas, Texas 75005 and before that at 3010 Knox Street, Dallas, Texas 75205-4028. Defendant’s florist business is currently located at 1909 Henderson Avenue, Dallas, Texas 75206-7319, and Defendant may be served with process by serving her at her current business address.

VENUE

4. Venue of this action lies in Dallas County pursuant to § 17.47(b) of the DTPA because the transactions and events giving rise to this action occurred in Dallas County and/or because Defendant do business in Dallas County.

PUBLIC INTEREST

5. By reason of the institution and operation of the unlawful practices set forth herein, Defendant has caused and will continue to cause immediate and irreparable injury, loss and damage to the STATE OF TEXAS and its citizens, and will also cause adverse effects to

legitimate business enterprise which conducts its trade and commerce in a lawful manner in this State. Therefore, Attorney General of the State of Texas believes and is of the opinion that these proceedings are in the public interest.

TRADE AND COMMERCE

6. Defendant RANDI PIERCE d/b/a FLOWERS FOR YOU, INC. d/b/a YOUR FLORIST is engaged in “trade” and “commerce” as defined by §17.45(6) of the DTPA, in that Defendant is engaged in the business of marketing and selling flowers and floral services.

NOTICE BEFORE SUIT

7. Pursuant to §17.47(a) of the Deceptive Trade Practices Act, contact has been attempted with the Defendant herein to inform her of the unlawful conduct alleged herein, by letter mailed by certified mail, return receipt requested.

8. Nevertheless, there is good cause to believe that immediate and irreparable injury, loss, or damage would occur as a result of a delay in obtaining a temporary restraining order to enjoin Defendant RANDI PIERCE d/b/a FLOWERS FOR YOU, INC. d/b/a YOUR FLORIST from continued violations of the DTPA. Sworn affidavits attached hereto establish that Defendant RANDI PIERCE d/b/a FLOWERS FOR YOU, INC. d/b/a YOUR FLORIST places unauthorized charges on the credit cards, debit cards, and check cards of YOUR FLORIST’s customers. YOUR FLORIST employees and RANDI PIERCE, retain all credit card, debit card, and check card receipts from YOUR FLORIST’s consumer transactions, and periodically place

charges against randomly chosen credit card, debit card, and check card numbers. If Defendant is not immediately restrained, she will continue to use these false, misleading, or deceptive practices in her florist business and may cause many more consumers to lose their money by such deception. As such, the State is initiating this action without notice to Defendant as authorized by § 17.47 (a) of the DTPA.

ACTS OF AGENTS

9. Whenever in this petition it is alleged that Defendant did any act or thing, it is meant that Defendant performed or participated in such act or thing or that such act was performed by the officers, agents or employees of said Defendant, and in each instance, the officers, agents or employees of said Defendant that were then authorized to and did in fact act on behalf of Defendant or otherwise acted under the guidance and direction of the Defendant.

NATURE OF DEFENDANT'S CONDUCT

10. Defendant RANDI PIERCE d/b/a FLOWERS FOR YOU, INC. d/b/a YOUR FLORIST engages in false, misleading, or deceptive conduct by making unauthorized charges against the credit cards, debit cards, and check cards of former customers. RANDI PIERCE operates as a florist under the fictitious name YOUR FLORIST, and allows customers to pay for floral goods and services by credit card, debit card, and check card. When YOUR FLORIST's customers make valid purchases and pay with credit cards, debit cards, or check cards, RANDI PIERCE and YOUR FLORIST employees retain the customers' credit card, debit card, and check card

information. After the initial purchase, RANDI PIERCE and the employees of YOUR FLORIST make additional charges against consumers' credit cards, debit cards, and check cards despite the fact that no subsequent purchases are made or authorized.

11. Consumers that notice the unauthorized charges on their financial statements generally are unsuccessful in having RANDI PIERCE or YOUR FLORIST's personnel void the transactions and reimburse them for the unauthorized charges. RANDI PIERCE and YOUR FLORIST employees are not responsive to complaints about unauthorized charges. RANDI PIERCE and YOUR FLORIST employees do not return phone calls from complaining consumers, and or inform consumers that they cannot resolve the problem. If RANDI PIERCE or a YOUR FLORIST employee promises reimbursement, it generally is not provided.

Additionally, RANDI PIERCE and YOUR FLORIST employees provide their customers with various unsubstantiated excuses for the unauthorized charges. For example, customers are told the charges were unintentional mistakes, accidents, or errors. Meanwhile other customers are told that former employees made the fraudulent charges. Many customers are left with no recourse but to have their credit card companies dispute the charges, and or cancel their credit cards or change their credit card numbers.

12. Even consumers who eventually receive refunds from RANDI PIERCE and/or YOUR FLORIST are frequently victimized again. YOUR FLORIST customers who do not cancel their credit cards, debit cards or check cards or change the credit card, debit card, or check card numbers remain vulnerable. Several consumers complain of unauthorized charges appearing on their credit cards, debit cards, or check cards shortly after resolving YOUR FLORIST's prior

unauthorized charges. Attempts at securing reimbursement for the new unauthorized charges are stymied by YOUR FLORIST employees' and RANDI PIERCE's efforts to ignore, placate and deceive or mislead their customers.

VIOLATIONS OF THE DECEPTIVE TRADE PRACTICES ACT

13. Defendant, as set out in Paragraphs 10 through 12, in the course and conduct of trade and commerce, has directly and indirectly engaged in false, misleading, or deceptive acts and practices in violation of Section 17.46(a) and (b) of the Texas Deceptive Trade Practices Act, including but not limited to:

- A. Placing unauthorized charges on the credit cards, debit cards, and check cards of YOUR FLORIST's customers;
- B. Falsely representing that unauthorized charges made to consumers' credit cards, debit cards, and check cards have the approval of those consumers, which they do not;
- C. Falsely representing that consumers, who purchase goods or services from Your Florist are obligated to pay for Your Florist's additional unauthorized charges made to their credit cards, debit cards, and check cards;
- D. Failing to disclose that RANDI PIERCE and/or FLOWERS FOR YOU, INC.'s employees and/or YOUR FLORIST employees may make unauthorized charges on its customers' credit cards, debit cards, and check cards, which RANDI PIERCE and/or FLOWERS FOR YOU, INC.'s employees and/or YOUR FLORIST employees know at the time of the transaction and do not disclose to customers in order to induce them into transactions into which they would not enter had the information about the unauthorized charges been disclosed;
- E. Falsely representing to former customers that YOUR FLORIST will void unauthorized transactions and reimburse their accounts for those charges, when such remedial actions are not intended or performed;
- F. Falsely representing that RANDI PIERCE and or YOUR FLORIST will void

unauthorized transactions and reimburse consumers for those charges, when such remedial action is not intended or performed;

- G. Falsely representing to former customers that RANDI PIERCE, YOUR FLORIST, and or certain YOUR FLORIST employees cannot reimburse their credit card, debit card, or check card accounts for unauthorized charges made by YOUR FLORIST; &
- H. Falsely representing to YOUR FLORIST customers that RANDI PIERCE and or the employees of YOUR FLORIST will contact them in efforts to resolve the customers' complaints about YOUR FLORIST's unauthorized charges on their credit cards, debit cards, and check cards;

15. Moreover, the Consumer Protection Division has reason to believe that the above actions specifically violate Section 17.46(a) and the following provisions of Section 17.46(b) of the DTPA:

- A. Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits or quantities which they do not have or that a person has a sponsorship, approval, status, affiliation, or connection which they do not have in violation of §17.46(b)(5);
- B. Representing that an agreement confers or involves rights, remedies, or obligations which it does not have or involve, or which are prohibited by law in violation of §17.46(b)(12); and
- C. Failing to disclose information concerning goods or services which was known at the time of the transaction when such failure to disclose such information was intended to induce the consumer into a transaction into which the consumer would not have entered had the information been disclosed in violation of §17.46(b)(24).

DISGORGEMENT

16. All of Defendant's assets are subject to the equitable remedy of disgorgement, which is the forced relinquishment of all benefits that would be unjust for Defendant to retain,

including all ill-gotten gains and benefits. Defendant should be ordered to disgorge all monies secured through deception, together with all of the proceeds, profits, income, interest and accessions thereto. Such disgorgement should be for the benefit of the victimized consumers and the State of Texas.

CONSTRUCTIVE TRUST

17. A constructive trust should be placed upon all of Defendant, RANDI PIERCE's assets, including all assets kept under the names YOUR FLORIST and FLOWERS FOR YOU, INC., in favor of all consumers victimized by Defendant and in favor of the State of Texas until this court determines the appropriate amount of restitution and disgorgement.

APPLICATION FOR EX PARTE TEMPORARY RESTRAINING ORDER, TEMPORARY INJUNCTION, AND PERMANENT INJUNCTION AND ASSET FREEZE

18. The State alleges that by reason of the foregoing, Defendant should not continue to place unauthorized charges on consumers' credit cards, debit cards, and check cards in violation of the laws of the State of Texas and that unless injunctive relief is immediately granted, Defendant will continue to use false, misleading, or deceptive trade practices to place unauthorized charges on consumers' credit cards, debit cards, and check cards. Specifically, Defendant RANDI PIERCE d/b/a FLOWERS FOR YOU, INC. d/b/a YOUR FLORIST will continue to accept credit card, debit card, and check card payment for floral services without disclosing that Defendant may place unauthorized charges on her customers' credit cards, debit cards, and check cards; will

continue to keep record of customers' credit card, debit card, and check card information; will continue to place unauthorized charges on her customers' credit cards, debit cards, and check cards; will continue to be untruthful, misleading, deceptive, evasive and or unresponsive to complaints of unauthorized charges; will continue to be misleading or deceptive about the reason for the unauthorized charges; will continue to be misleading or deceptive about Defendant's intentions or efforts to reimburse her customers for unauthorized charges; and will continue to not provide her customers reimbursements for unauthorized charges. If Defendant is not immediately restrained, many more consumers may lose their money and have unauthorized charges placed made against their credit card, debit card, and check card accounts through Defendant's false, misleading, or deceptive practices.

19. The State of Texas also asks that the assets of Defendant RANDI PIERCE d/b/a FLOWERS FOR YOU, INC. d/b/a YOUR FLORIST be frozen during the pendency of these legal proceedings to preserve monies for consumer restitution upon final judgment. Defendant RANDI PIERCE d/b/a FLOWERS FOR YOU, INC. d/b/a YOUR FLORIST received large sums of money from her victims by placing unauthorized charges on consumers' credit cards, debit cards, and check cards. Furthermore, Defendant RANDI PIERCE d/b/a FLOWERS FOR YOU, INC. d/b/a YOUR FLORIST continues to have access to the credit card, debit card, and check card information of former and future customers. Unless the injunctive relief is granted, Defendant's assets may be dissipated, lost, altered, removed or materially injured. The interests of the State of Texas and the public require an Ex Parte Asset Freeze to preserve monies for consumer restitution.

20. Defendant, unless immediately restrained by this Honorable Court, will continue violating the laws of the State of Texas, and injury, loss, and damage will result to the State of Texas and to the general public. For the reasons set forth above, the STATE OF TEXAS requests an Ex Parte Temporary Restraining Order; and after notice and hearing, a Temporary and Permanent Injunction as set out below, as authorized pursuant to § 17.47(a) of the DTPA.

REQUEST TO CONDUCT DISCOVERY PRIOR TO TEMPORARY INJUNCTION HEARING

21. The STATE OF TEXAS requests leave of this Court to conduct telephone, oral, written, and other depositions of witnesses prior to any scheduled Temporary Injunction Hearing and prior to Defendant's answer date. There are a number of witnesses who may need to be deposed prior to any scheduled Temporary Injunction Hearing. Any depositions, telephonic or otherwise, would be conducted with reasonable shortened notice to Defendant and her attorneys if known.

INJURY TO CONSUMERS

22. By means of the foregoing unlawful acts and practices, Defendant has acquired money or other property from identifiable persons to whom such money or property should be restored, or who in the alternative are entitled to an award of damages.

PRAYER

23. WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that Defendant

RANDI PIERCE d/b/a FLOWERS FOR YOU, INC. d/b/a YOUR FLORIST be cited according to law to appear and answer herein; that before notice and hearing a TEMPORARY RESTRAINING ORDER with asset freeze be issued; that after due notice and hearing a TEMPORARY INJUNCTION be issued; and upon final hearing a PERMANENT INJUNCTION be issued restraining and enjoining Defendant individually and by her agents, servants, employees, and representatives from making the representations, doing the acts, and engaging in the practices set out in the proceeding paragraphs as well as from making the following representations and doing the following acts and engaging in the following practices in the pursuit and conduct of trade or commerce within the State of Texas as follows:

- A. Transferring, concealing, destroying, or removing from the jurisdiction of this Court any books, records, documents, invoices or other written materials relating to business of Defendant currently or hereafter in Defendant's possession, custody or control except in response to further orders or subpoenas in this cause;
- B. Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits or quantities which they do not have or that a person has a sponsorship, approval, status, affiliation, or connection which they do not have;
- C. Representing that an agreement confers or involves rights, remedies, or obligations which it does not have or involve, or which are prohibited by law;
- D. Failing to disclose information concerning goods or services which was known at the time of the transaction when such failure to disclose such information was intended to induce the consumer into a transaction into which the consumer would not have entered had the information been disclosed;
- E. Placing unauthorized charges on the credit cards, debit cards, or check cards of consumers;

- F. Falsely representing that unauthorized charges made to consumers' credit cards, debit cards, or check cards have the approval of those consumers, which they do not;
- G. Falsely representing that consumers, who purchase goods or services from YOUR FLORIST or RANDI PIERCE, are obligated to pay for YOUR FLORIST's additional unauthorized charges made to their credit cards, debit cards, or check cards;
- H. Falsely representing that consumers are obligated to pay for unauthorized charges made to their credit cards, debit cards, or check cards;
- I. Failing to disclose that RANDI PIERCE and/or FLOWERS FOR YOU, INC.'s employees and/or YOUR FLORIST employees may make unauthorized charges on their customers' credit cards, debit cards, or check cards, which RANDI PIERCE and/or FLOWERS FOR YOU, INC.'s employees and/or YOUR FLORIST employees know at the time of the transaction and do not disclose to their customers in order to induce them into transactions into which they would not enter had the information about the unauthorized charges been disclosed;
- J. Failing to disclose that unauthorized charges may be made to a consumer's credit card, debit card, or check card, which is known at the time of the transaction and is not disclosed to the consumer in order to induce him into a transaction into which he would not have entered had the information about the unauthorized charges been disclosed;
- K. Falsely representing to consumers that RANDI PIERCE and/or YOUR FLORIST will void unauthorized transactions and reimburse their credit card, debit card, or check card accounts for those charges, when such remedial action are not intended or performed;
- L. Falsely representing to consumers that unauthorized transactions will be voided and charges reimbursed to consumers' credit cards, debit cards, or check cards, when such remedial action is not intended or performed;
- M. Falsely representing that RANDI PIERCE and/or YOUR FLORIST will void unauthorized transactions and reimburse consumers for those charges, when such remedial action is not intended or performed;
- N. Falsely representing that RANDI PIERCE, YOUR FLORIST or its employees cannot reimburse their credit card, debit card, or check card

accounts for unauthorized charges made by RANDI PIERCE and/or YOUR FLORIST employees;

- O. Falsely representing that unauthorized charges to consumer credit cards, debit cards, or check cards cannot be reimbursed;
- P. Falsely representing to consumers that they will be contacted in efforts to resolve the consumers' complaints about unauthorized charges on their credit cards, debit cards, or check cards; and
- Q. Failing to provide to any of Defendant's agents, servants, employees or representatives, written notice of the existence and terms of any injunction entered in this case, and of their duty to comply with its terms

24. Plaintiff further prays that upon final hearing this Court order Defendant to restore all money or other property taken from identifiable persons by means of Defendant's unlawful acts or practices, or, in the alternative, award judgment for damages to compensate identifiable persons for such losses as provided in §17.47(d) of the DTPA.

Plaintiff further prays that upon final hearing this Court order Defendant to pay civil penalties of \$20,000.00 per violation of the DTPA to the State of Texas, as authorized by §17.47(c)(1) of the DTPA.

Plaintiff further prays that this Court grant leave to conduct telephone, oral, written, and other depositions of witnesses prior to any scheduled Temporary Injunction Hearing and prior to Defendant's answer date, with reasonable shortened notice to Defendant and her attorneys if known.

Plaintiff further prays for costs of Court, reasonable attorney fees as provided in Tex. Gov't. Code Ann. § 402.006(c), and such other relief to which Plaintiff may be justly entitled.

Respectfully submitted,

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